

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108
	)	
	)	

**REPLY COMMENTS OF GOGO INC.**

The opening comments confirm that the 2015 Order created substantial ambiguity regarding how the current Internet regulations should be applied to Internet service providers that do not fit the paradigm of wired or terrestrial service providers.<sup>1</sup> Many providers, including Gogo, provide service under unique circumstances and subject to unique constraints that the existing rules simply did not contemplate. In-flight Wi-Fi providers, for example, offer services that must comply with technical, airline, and public safety requirements not faced by other types of providers, and must provide service to hundreds of passengers that are traveling at over 500 miles per hour in changing weather conditions. In-flight Wi-Fi providers also can face spectrum constraints that traditional fixed broadband providers do not.

The confusion and uncertainty created for these unique providers under the current regime continue to impede growth and innovation in the market. The record confirms that the Commission should exempt those providers that face unique circumstances in the provision of broadband Internet access service, including providers of in-flight Wi-Fi connectivity, from any ongoing rules. At a minimum, the Commission should explicitly acknowledge that service

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<sup>1</sup> *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015), <http://bit.ly/1NrZ47> (“2015 Order”).

providers facing uniquely challenging network and market dynamics should have the flexibility to manage their networks to provide an optimal consumer experience.

**I. In-Flight Wi-Fi Presents Unique Circumstances for which the Existing Rules are a Poor Fit.**

The Commission should exempt in-flight Wi-Fi providers from any ongoing rules. Gogo operates broadband networks that offer tremendous benefits to consumers who are traveling by air, and Gogo is constantly working to improve the speed and capacity of its networks as in-flight connectivity grows in popularity and importance for consumers.<sup>2</sup> As Inmarsat, Inc. (“Inmarsat”), also a provider of in-flight connectivity, explained in its comments, in-flight Wi-Fi providers deploy their service under markedly different circumstances than providers of traditional fixed or wireless broadband service providers. Like Gogo, Inmarsat is working to bring “broadband service to places that otherwise might not have it at all.”<sup>3</sup> In-flight providers offer broadband to the 200 or more passengers aboard airplanes flying 30,000 feet in the air, traveling at over 500 miles per hour, in changing weather conditions. In-flight Wi-Fi providers also must comply with different technical and public safety requirements than terrestrial providers,<sup>4</sup> and they must meet the demands of airlines and law enforcement.<sup>5</sup> Inmarsat confirmed that, as a result, “service availability can depend on network operators’ flexibility to use congestion-management and other network management techniques.”<sup>6</sup>

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<sup>2</sup> See Press Release, Gogo, Gogo’s Next Generation Inflight Modem Takes Flight (July 31, 2017), <http://bit.ly/2weoeLA>; Report, *The Travelers of Tomorrow*, Gogo (May 16, 2017), <http://bit.ly/2sklSID>.

<sup>3</sup> *Id.*

<sup>4</sup> See Comments of Inmarsat, Inc., WC Docket No. 17-108, at 6-7 (July 17, 2017), <http://bit.ly/2ulHiGj> (“Inmarsat Comments”).

<sup>5</sup> Comments of Gogo Inc., WC Docket No. 17-108, at 4-5 (July 17, 2017), <http://bit.ly/2vk3xkz>; Inmarsat Comments.

<sup>6</sup> Inmarsat Comments at 2.

Gogo agrees with Inmarsat that the Commission should now take the opportunity to clarify that “curated offerings” like in-flight connectivity “are outside the scope” of any regulation of Internet service providers.<sup>7</sup> Commission acknowledgment of the unique nature of in-flight broadband would ensure that any regulations do not undermine the efforts of providers to bring connectivity to consumers while they are in flight. Such an exclusion also would not adversely affect any open Internet protections that may apply generally to terrestrial services.

## **II. The Record Establishes That Any Rules Should Give Service Providers Flexibility to Optimize their Networks for the Benefit of their Customers.**

Any regulation of Internet service providers should include flexibility that takes into account the specific network management needs of different service providers and different contexts. Many commenters agree with Gogo that one-size-fits-all rules have not proven to be workable. For example, a coalition of universities and colleges called for the continued exemption from the rules for premises operators,<sup>8</sup> and the Illinois Department of Innovation & Technology described how healthcare monitoring networks and connected car technologies do not fit neatly into the current regime.<sup>9</sup> Sprint, like Gogo, explained that on some networks certain applications “occupy more bandwidth than can reasonably be consumed by users of mobile devices,” and that delivery of “these applications solely at the maximum available bandwidth, without room for network management or flexibility, has the potential to occupy network resources to the detriment of other users.”<sup>10</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> See Comments of American Association of Community Colleges, *et al.*, WC Docket No. 17-108 (July 17, 2017), <http://bit.ly/2uY0ugY>.

<sup>9</sup> Comments of the Illinois Department of Innovation & Technology, WC Docket No. 17-108 (July 16, 2017), <http://bit.ly/2vur5nb>.

<sup>10</sup> Comments of Sprint Corporation, WC Docket No. 17-108, at 3 (July 17, 2017), <http://bit.ly/2ulItWi> (“Sprint Comments”).

T-Mobile echoed the need for flexibility for network management and also agreed that the Commission's rules must account for the scarcity of spectrum resources faced by broadband providers. T-Mobile argued that if the Commission retains some Internet regulations, it should "modify the reasonable network management exception to allow for flexible provider network management efforts, particularly for mobile networks, which rely on radio access and spectrum for service."<sup>11</sup> Verizon likewise supports "rules that recognize that providers will continue to need flexibility to manage their networks efficiently."<sup>12</sup>

The Commission should exempt service providers, such as Gogo, that have unique network management needs. But at a minimum Gogo will need greater flexibility to manage its network to provide a consistently high level of service for customers in the context of in-flight connectivity. Allowing for flexibility in network management under any Internet regulations will ensure continued innovation in broadband service offerings and the continued provision of reliable broadband services to consumers.

### **III. Separating Business and Technical Justifications for Network Management is Unworkable.**

Finally, several commenters agree with Gogo that it is virtually impossible to separate "business" justifications from "technical" justifications for network management decisions.<sup>13</sup> As Sprint explained, "virtually all network management decision making must take into account financial and business considerations in addition to technical issues."<sup>14</sup> CTIA agreed that the distinction between technical and business justifications is illusory and harmful, arguing that "the

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<sup>11</sup> Comments of T-Mobile USA, Inc., WC Docket No. 17-108, at ii (July 17, 2017), <http://bit.ly/2ulyEaG>.

<sup>12</sup> Comments of Verizon, WC Docket No. 17-108, at 21 (July 17, 2017), <http://bit.ly/2w7WyZn>.

<sup>13</sup> See 2015 Order ¶ 32.

<sup>14</sup> Sprint Comments at 3.

order appears to hinder business models that allow mobile operators to optimize their networks in response to consumers' choices, and could even bar any practice that affects the provider's costs or revenues (a category that sweeps in any decision a company could make)."<sup>15</sup> Gogo agrees with these commenters that – to the extent the Commission retains network management rules – the elimination of the misleading “business” versus “technical” distinction would provide helpful clarity for providers on allowable network management practices.

### CONCLUSION

The Commission has the opportunity in this proceeding to offer clarity and certainty to providers of critical broadband Internet access services. Specifically, an exemption from any rules for in-flight services like Gogo's would provide the regulatory certainty necessary for Gogo's planned expansions of its networks. At a minimum, the FCC should expressly acknowledge that in-flight connectivity faces unique factors that warrant maximum flexibility in network management practices.

Respectfully submitted,

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<sup>15</sup> Comments of CTIA, WC Docket No. 17-108, at 16 (July 17, 2017), <http://bit.ly/2uzs9oU>.